


SO ORDERED.

SIGNED this 25th day of August, 2021.



  
LENA MANSORI JAMES  
UNITED STATES BANKRUPTCY JUDGE

---

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
GREENSBORO DIVISION

In Re:	)	
	)	CASE NO. 20-10247
Randolph Hospital, Inc. d/b/a Randolph	)	
Health,	)	CHAPTER 11
	)	
Debtors. <sup>1</sup>	)	
	)	

---

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER APPROVING  
DEBTORS' THIRD AMENDED JOINT PLAN OF LIQUIDATION  
DATED AUGUST 13, 2021**

THIS MATTER came before the Court upon (i) the filing of the *Debtors' Third Amended Joint Plan of Liquidation Dated August 13, 2021* (as may be modified or amended from time to time, the "Plan")<sup>2</sup> [Doc. No. 954] and (ii) the entry of this Court's *Order (I) Approving Disclosure Statement; (II) Establishing Forms and Procedures for Solicitation and Tabulation of Votes to*

---

<sup>1</sup> The Debtors are Randolph Hospital, Inc. d/b/a Randolph Health, Case No. 20-10247; Randolph Specialty Group Practice, Case No. 20-10248; and MRI of Asheboro, LLC d/b/a Randolph MRI Center, Case No. 20-10249.

<sup>2</sup> Unless otherwise specified, capitalized terms and phrases used in this order (the "Confirmation Order") shall have the meanings ascribed to them in the Plan. Any rules of interpretation set forth in the Plan shall apply to this Confirmation Order. In addition, in accordance with the Plan, any term used in the Plan or this Confirmation Order that is not defined in the Plan or this Confirmation Order, but that is used in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules.

*Accept or Reject the Plan; (III) Establishing Deadline and Procedures for Filing Objections to the Confirmation of the Plan; and (IV) Granted Related Relief* (the "Solicitation Order") [Doc. No. 917]; and upon adequate and sufficient notice of the Plan, the Solicitation Order, all related documents, procedures, and deadlines, and the hearing before the Court on August 25, 2021 to consider and rule on the confirmation of the Plan (the "Confirmation Hearing") to all known creditors and parties-in-interest; and the solicitation of acceptances or rejections of the Plan from holders of claims against the Debtors having been conducted in the manner required by the Solicitation Order and applicable law; and the Court having reviewed and considered (a) the Plan, all modifications thereto and all requested relief related thereto, (b) all documents submitted in support of the Plan, (c) any objections to the Plan, and (d) the statements of counsel and evidence presented at the Confirmation Hearing; any objections to confirmation of the Plan having been resolved, withdrawn, or overruled on the record at the Confirmation Hearing; and it appearing that the Court has jurisdiction over this matter; and it further appearing that the legal and factual bases set forth in the documents submitted in support of the Plan and at the Confirmation Hearing establish just cause for the relief granted herein; and it appearing that such relief is in the best interest of the Debtors, their estates and creditors, and other parties-in-interest; and upon the record of the Confirmation Hearing and all of the pleadings and proceedings in these Chapter 11 Cases; and the Court having determined that the Debtors have established just cause for the relief granted herein; and after due deliberation thereon and good and sufficient cause appearing therefore:

**IT IS HEREBY FOUND AND CONCLUDED THAT:**

**I. Findings and Conclusions**

1. This Confirmation Order constitutes the Court's findings of fact and conclusions of law under Fed. R. Civ. P. 52, as made applicable by Fed. R. Bankr. P. 9014 and 7052. Any and all findings of fact will constitute findings of fact even if they are stated as conclusions of law, and any conclusions of law will constitute conclusions of law even if they are stated as findings of fact.

## **II. Judicial Notice**

2. The Court takes judicial notice of the docket in these Chapter 11 Cases maintained by the Clerk of the Bankruptcy Court and/or the duly-appointed Administrative Agent in these cases, including, without limitation, all pleadings and other documents filed, all orders entered, and all evidence and argument made, proffered, or adduced at the hearings held before the Court during the pendency of these Chapter 11 Cases.

## **III. Jurisdiction and Venue**

3. On March 6, 2020 (the "Petition Date"), the Debtors filed voluntary chapter 11 petitions in the United States Bankruptcy Court for the Middle District of North Carolina ("Court") commencing the above-captioned cases ("Chapter 11 Cases"). The Debtors are debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors were and are qualified to be Debtors under section 109 of the Bankruptcy Code.

4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and Local Civil Rule 83.11, M.D.N.C.

5. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (L) and (O).

6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

## **IV. Solicitation**

7. On August 13, 2021, the Debtors filed their *Third Amended Joint Plan of Liquidation Dated August 13, 2021* (defined herein as the “Plan”). Prior to the Voting Deadline, the Debtors’ Claims and Solicitation Agent served the Plan, as amended, via First Class mail and electronic mail on August 13, 2021. *See* Certificate of Service dated August 16, 2021 [Doc. No. 956]. Section 1127(a) of the Bankruptcy code provides a plan proponent the right to modify the plan “at any time” before confirmation so long as the plan continues to meet the requirements of Bankruptcy Code §§ 1122 and 1123, and Bankruptcy Code § 1127(d) provides that all stakeholders that previously have accepted the plan should be deemed to have accepted the modified plan. Here, the modifications do not modify the Plan such that the requirements of §§ 1122 and 1123 of the Bankruptcy Code are not met. The modifications are purely technical in nature or serve to clarify other provisions already in the Plan. Thus, the Court finds that the Plan complies with Bankruptcy Code § 1127 and no further solicitation is required.

8. Further, pursuant to Bankruptcy Rule 3019, the Court finds that all modifications made by the Debtors to the Plan are deemed accepted by all creditors who previously accepted the Plan, as the modifications do not adversely change the treatment of the claim of any creditor in these Cases.

9. Finally, the Disclosure Statement, the Plan, the ballots, the Solicitation Order, and all relevant related materials were transmitted and served as required by the Solicitation Order and in compliance with the Bankruptcy Code, the Bankruptcy Rules, and all local bankruptcy rules, and such transmittal and service, including notice by publication pursuant to the Solicitation Order, constitutes proper and sufficient notice reasonably calculated, under the circumstances, to apprise all interested parties (including known and unknown creditors and all parties-in-interest) of the pendency of the cases and the Plan’s proposed confirmation afford

them an opportunity to present their objections, and no other or further notice is or shall be required. As established by *Declaration of Stephenie Kjontvedt of Epiq Corporate Restructuring, LLC Regarding Voting and Tabulation of Ballots Cast on the Debtors' Amended Joint Plan of Liquidation Dated June 30, 2021* (Doc. No. 963, the “Voting Certification”), the Debtors provided good and sufficient notice of Plan, the Solicitation Order, all related documents, procedures, and deadlines (including the deadline for filing and serving objections to the Plan), and the Confirmation Hearing.

#### **V. Voting**

10. Votes to accept or reject the Plan have been solicited with proper and sufficient notice and tabulated fairly, in good faith, and in a manner consistent with the Bankruptcy Code, the Bankruptcy Rules, and industry practice.

#### **VI. Burden of Proof**

11. The Debtors have the burden of proving the elements of section 1129(a) of the Bankruptcy Code by a preponderance of the evidence, and they have met that burden as further found and determined herein.

#### **VII. Compliance with Section 1129 of the Bankruptcy Code**

##### **A. Section 1129(a)(1) - Compliance of the Plan with Applicable Provisions of the Bankruptcy Code**

12. For the reasons set forth below, the Plan complies with the applicable provisions of the Bankruptcy Code. Therefore, section 1129(a)(1) of the Bankruptcy Code is satisfied with respect to the Plan.

##### **a. Sections 1122 and 1123(a)(1) through (4) - Classification and Treatment of Claims**

13. The Plan complies with all applicable provisions of the Bankruptcy Code as required by section 1129(a)(1) of the Bankruptcy Code, including, without limitation, sections

1122 and 1123 of the Bankruptcy Code. Pursuant to sections 1122(a) and 1123(a)(1) of the Bankruptcy Code, the Plan designates separate classes of claims, other than Administrative Expense Claims, Priority Claims, and other unclassified claims set forth in the Plan, each of which contains only claims that are substantially similar to the other claims within the relevant class.

14. Pursuant to sections 1123(a)(2) through (4) of the Bankruptcy Code, the Plan specifies each class of claims that is not impaired, specifies the treatment of each class of claims that is impaired, and provides the same treatment for each claim within a particular class.

**b. Section 1123(a)(5) - Adequate Means for Implementation of the Plan**

15. The Plan sets forth adequate means for its implementation. The Plan sets forth in detail the mechanisms for carrying out the Plan. Among other things, the Plan provides for the establishment of the Liquidation Trust and appointment of the Liquidation Trustee on or before the Effective Date. On the Effective Date, the Debtors' Estates shall transfer and shall be deemed to have irrevocably transferred to the Liquidation Trustee, for and on behalf of the beneficiaries of the Liquidation Trust, with no reversionary interest in the Debtors, the Trust Assets (which exclude (i) the Restricted Assets, (ii) the D&O Claims and other Tort Claims (and all related rights and remedies, including with respect to any applicable Insurance Policies), and (iii) any other rights or assets that vest or re-vest in any of the Debtors under the terms of the Plan, free and clear of all Liens, Claims, encumbrances or interests of any kind in such property, except as otherwise expressly provided in the Plan. Following the vesting of the Trust Assets in the Liquidation Trust, the Trust Assets shall thereafter be administered, liquidated (by sale, collection, recovery, settlement or other disposition) by the Liquidation Trustee in accordance with the Liquidation Trust Agreement and the Plan. This Confirmation Order shall constitute a

determination that the transfers of the Assets to the Liquidation Trust are legal and valid to the maximum extent permitted by applicable law and the Bankruptcy Code.

16. Further, on the Effective Date, the Creditors' Committee shall be replaced by the Advisory Committee, which shall oversee the Liquidation Trustee's administration of the Liquidation Trust and be deemed a representative of the Debtors and the Estates with respect to the D&O Claims and other Tort Claims (which shall revest in the Debtors on the Effective Date along with all related rights and remedies, including with respect to any applicable Insurance Policies) in accordance with the provisions of Article 6 of the Plan and the other provisions of the Plan and the Liquidation Trust Agreement.

17. The Liquidation Trustee (and with respect to the D&O Claims and other Tort Claims, the Debtors, through the Advisory Committee) shall retain and may (but are not required to) enforce all Retained Causes of Action, whether arising before or after the Petition Date, and the Liquidation Trustee's (and with respect to the D&O Claims and other Tort Claims, the Advisory Committee's) rights to commence, prosecute or settle such Retained Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. Subject to the terms of the Plan, the Liquidation Trustee shall have the sole right and authority to pursue, prosecute, litigate to judgment and settle the Retained Causes of Action (other than the D&O Claims and other Tort Claims, which shall be pursued, prosecuted, litigated to judgment, and/or settled by the Advisory Committee consistent with Article 6.8 of the Plan).

18. The powers and authority of the Liquidation Trustee and any limitations thereon are set forth in the Plan and are further defined by the Liquidation Trust Agreement. All costs and expenses associated with the administration of the Liquidation Trust, including costs and expenses associated with objecting to, settling, estimating or otherwise resolving Claims that are

Disputed, adjudicating the Retained Causes of Action, and the Liquidation Trustee's acting as the disbursing agent after the Effective Date shall be the responsibility of and solely paid by the Liquidation Trust subject to the terms of the Plan and the Liquidation Trust Agreement.

19. This Court finds and determines that the transfers of the Trust Assets to the Liquidation Trust as of the Effective (or subsequent thereto consistent with the terms of the Plan and the Liquidation Trust Agreement) Date shall be valid and enforceable to the maximum extent permissible under applicable law, including the Bankruptcy Code and the Supremacy Clause of the United States Constitution.

**c. Section 1123(a)(5) — Substantive Consolidation**

20. Article 5.6 of the Plan provides that the Estate of each of the Debtors will be substantively consolidated into a single consolidated Estate for all purposes associated with Confirmation and Consummation. The Court finds that substantive consolidation of the Estates is appropriate because the Debtors' assets, affairs and liabilities are part of one integrated, comingled healthcare system and it would not be feasible to untangle each Estate. The cost to attempt to do so would result in a smaller distribution to creditors. Substantive consolidation benefits all creditors in these Cases.

**d. Section 1123(a)(6) — Nonvoting Equity Securities**

21. Sections 1123(a)(6) is not applicable to these cases because the Debtors are for not-for-profit entities without equity interests. Further, the Plan calls for the liquidation of the Debtors and does not provide for the issuance of any interests in any reorganized debtor.

**e. Section 1123(a)(7) – Selection of Officers and Directors**

22. On the Effective Date, Louis E. Robichaux, IV shall be retained as the Surviving Officer of the Debtors and appointed as the Liquidation Trustee of the Liquidation Trust.



Robichaux has served as the Chief Restructuring Officer of the Debtors throughout these Chapter 11 Cases. Robichaux's appointments and the terms thereof have been reviewed and approved by the Creditors Committee. Robichaux's appointments as Surviving Officer and Liquidation Trustee is consistent with the interests of creditors and with public policy. Accordingly, the Plan complies with section 1123(a)(7) of the Bankruptcy Code.

**f. Section 1123(b)(1) through 1123(b)(6)**

23. The discretionary provisions of the Plan, including those discussed below, comply with section 1123 of the Bankruptcy Code and are not inconsistent with other applicable provisions of the Bankruptcy Code.

**i. Section 1123(b)(1) - Impairment of Claims and Interests**

24. The Plan properly identifies and impairs or leaves unimpaired, as the applicable case may be, each class of claims.

**ii. Section 1123(b)(2) - Contracts and Leases**

25. On the Confirmation Date (except as provided in the Plan for certain payor agreements and provider agreements), but subject to the occurrence of the Effective Date, all executory contracts and unexpired leases of the Debtors entered into prior to the Petition Date that have not been previously assumed or rejected, have not been assumed and assigned to the Purchaser, or are not the subject of a pending motion to assume or reject, shall be deemed rejected by the Debtors pursuant to the provisions of section 365 of the Bankruptcy Code. For certain payor agreements and provider agreements which are disclosed on the Plan Supplement, the effective date of rejection shall be the IMA Termination Date, which is expected to be October 1, 2021.

26. This Confirmation Order shall constitute an order approving rejection of and

deeming rejected all executory contracts and unexpired leases rejected under the Plan on the Confirmation Date (but subject to the occurrence of Effective Date) or IMA Termination Date, as applicable.

27. Notwithstanding anything to the contrary in this Confirmation Order, Insurance Policies shall be treated as set forth in Article 7.3 of the Plan. This Confirmation Order shall constitute a determination that no default by the Debtors exists with respect to any of the Insurance Policies requiring cure, and that nothing in any prior order (including the Sale Order), any prior agreements (including any agreements underlying the Sale Order), or the Plan shall be construed or applied to modify impair, or otherwise affect the enforceability of the Insurance Policies or any coverage thereunder with regard to any claims or Causes of Action, including the D&O Claims and other Tort Claims.

iii. **Section 1123(b)(3) - Retention, Enforcement, and Settlement of Claims of the Debtors and Their Estates**

28. With respect to the retention and enforcement of claims of the Debtors and their Estates after the Effective Date, the Plan provides for the retention and preservation of all Retained Causes of Action to be prosecuted, negotiated, settled, or otherwise resolved consistent with the Plan's terms. Among other things, the Liquidation Trustee shall have all the rights and powers set forth in the Liquidation Trust Agreement, including without limitation the right to (1) effect all actions and execute all agreements, instruments and other documents necessary to implement the provisions of the Plan and the Liquidation Trust Agreement; (2) liquidate Trust Assets; (3) investigate, prosecute, compromise, and/or abandon all Retained Causes of Action (other than D&O Claims and Other Tort Claims); (4) resolve Disputed Claims subject to the terms of the Plan; (5) file objections to Disputed Claims and to prosecute, settle, compromise, withdraw, or resolve such objections subject to the terms of the Plan; (6) pay expenses incurred

in carrying out Liquidation Trustee's powers and duties under the Liquidation Trust Agreement, including professional fees, consistent with the terms of the Plan; (7) make distributions from the Trust Assets in accordance with the provisions of the Plan and the Liquidation Trust Agreement and open and maintain bank accounts, deposit funds, and draw checks to make such disbursements and pay expenses; (8) establish and administer any necessary reserves for Disputed Claims that may be required; (9) resolve any non-material matter or take any non-material action (as such terms are described in Article 6.7 of the Plan) without further application to or order of the Bankruptcy Court; and (10) resolve any material matter or take any material action (as such terms are described in Article 6.7 of the Plan) that has been approved by the Advisory Committee without further application to or order of the Bankruptcy Court. The Liquidation Trustee shall be vested with all rights, powers, and authority of a debtor in possession and trustee under the Bankruptcy Code with respect to the Retained Causes of Action (other than the D&O Claims and other Tort Claims) as of the Effective Date. As set forth more fully in, and subject to the terms of, Article 6.8 of the Plan, the Advisory Committee shall be vested with all rights, powers, and authority of a debtor in possession and trustee under the Bankruptcy Code with respect to the D&O Claims and Tort Claims. The Surviving Officer, as representative of the Debtors, shall have all rights with respect to the Restricted Assets, including without limitation all rights with respect to any Causes of Action relating to the Restricted Assets. The Liquidation Trustee, the Advisory Committee, and the Surviving Officer are appropriate representatives of the Estates to prosecute and pursue the Retained Causes of Action.

iv. **Section 1123(b)(4) — Sale of Property and Distribution of Proceeds**

29. The Plan provides for the transfer of the Trust Assets to the Liquidation Trust for the sole and exclusive benefit of the beneficiaries of the Liquidation Trust, but subject to the

provisions of the Plan and the Liquidation Trust Agreement. The transfer and any subsequent sale or other disposition of any such Trust Assets or other assets pursuant to the Plan shall not be subject to any transfer or similar taxes pursuant to section 1146(c) of the Bankruptcy Code.

**v. Section 1123(b)(6) - Other Provisions Not Inconsistent with Bankruptcy Code**

30. The Plan includes additional provisions that are not inconsistent with the applicable provisions of the Bankruptcy Code, including: (i) provisions governing distributions on account of Allowed Claims, particularly as to the timing and calculation of amounts to be distributed; (ii) procedures for resolving Disputed Claims and making distributions on account of such claims once resolved; (iii) provisions regarding the severability of Plan provisions; (iv) provisions for the release of the Debtors' professionals, the Committee's professionals, and other Persons by the Debtors and holders of claims who have not opted out of such releases; (v) provisions for exculpation of the Debtors, the Committee, and other Persons; and (vi) provisions for an injunction against certain entities from engaging in certain actions adverse to the Debtors, the Estates, and other Persons.

**B. Section 1129(a)(2) - Compliance of the Plan Proponents with Applicable Provisions of the Bankruptcy Code**

31. The Debtors are proper proponents of the Plan and have solicited acceptances of the Plan in accordance with the requirements of sections 105 and 1125 of the Bankruptcy Code, the Bankruptcy Rules, the local rules of this Court, and the Solicitation Order. The Debtors, the Committee, and their respective agents and professionals have acted in "good faith" within the meaning of section 1125(e) of the Bankruptcy Code.

32. Pursuant to the Solicitation Order, on or about July 7, 2021, the Debtors, through Epiq Corporate Restructuring, LLC ("Epiq"), the Debtors' court-approved Claims and Solicitation Agent, commenced the solicitation of votes with respect to the Plan and service of applicable

materials on both voting and non-voting parties as set forth on the affidavit filed at docket number 921. In addition, notice of the Plan, Confirmation Hearing, and additional relevant information was published in *The Courier-Tribune* as set forth on the affidavit filed at docket number 964.

33. The procedures by which the ballots for acceptance or rejection of the Plan were solicited and tabulated were adequate, fair, properly conducted, and in accordance with Fed. R. Bankr. P. 3017 and 3018 and section 1126(b) of the Bankruptcy Code.

34. Therefore, section 1129(a)(2) of the Bankruptcy Code is satisfied with respect to the Plan.

**C. Section 1129(a)(3) - Proposal of Plan in Good Faith**

35. The Debtors proposed the Plan in good faith and not by any means forbidden by law. Therefore, section 1129(a)(3) of the Bankruptcy Code is satisfied with respect to the Plan.

**D. Section 1129(a)(4) - Bankruptcy Court Approval of Certain Payments as Reasonable**

36. The Plan provides that Professionals or other entities requesting compensation or reimbursement of expenses pursuant to section 327, 328, 329, 330, 331, or 503(b)(2) of the Bankruptcy Code for services rendered before the Effective Date shall file with the Court an application for final allowance of compensation and reimbursement of expenses, which application will be subject to approval by the Court as reasonable. Therefore, section 1129(a)(4) of the Bankruptcy Code is satisfied with respect to the Plan.

**E. Section 1129(a)(5) — Post-Confirmation Directors, Officers, and Insiders**

37. From and after the Effective Date, the Surviving Officer shall be appointed to administer the Restricted Assets, wind down the Debtors, and take such other actions as authorized by the Plan. The Surviving Officer shall have and perform all of the duties, responsibilities, rights, and obligations set forth in the Plan. From and after the Effective Date,

the Surviving Officer or his successor shall continue to serve in his capacity as the sole officer, director, and responsible person of the Debtors through the earlier of (a) the date the Debtors are dissolved in accordance with the Plan; and (b) the date the Surviving Officer resigns or is replaced or terminated. In the event that the Surviving Officer resigns or is terminated or unable to serve as a director, then a successor Surviving Officer shall be selected by the Surviving Officer, subject to the approval of the Advisory Committee, and the terms and conditions of such successor Surviving Officer's compensation shall be subject to the approval of the Advisory Committee. The successor Surviving Officer shall then be deemed to be the Surviving Officer for all purposes under the Plan. In the event that the Surviving Officer resigns or is terminated or unable to serve as a director and is unable to select a successor Surviving Officer, then a successor Surviving Officer shall be selected by the Advisory Committee.

**F. Section 1129(a)(6) - Approval of Rate Changes**

38. The Plan does not involve the establishment of rates over which any regulatory commission has or will have jurisdiction after confirmation. Therefore, section 1129(a)(6) of the Bankruptcy Code is inapplicable with respect to the Plan.

**G. Section 1129(a)(7) - Best Interests of Creditors**

39. With respect to each impaired class of claims, each Holder of a claim in such class has either accepted the Plan or will receive or retain under the Plan on account of such claim property of a value, as of the Effective Date, that is not less than the amount that such Holder would receive or retain if the Debtors were liquidated on the Effective Date under chapter 7 of the Bankruptcy Code, as evidenced by the hypothetical chapter 7 Liquidation Analysis submitted by the Debtors in support of the Plan. Therefore, to the extent it is applicable, section 1129(a)(7) of the Bankruptcy Code is satisfied with respect to the Plan.

**H. Section 1129(a)(8) - Acceptance of the Plan by Each Impaired Class**

40. Class 1 and Class 2 are unimpaired under the Plan and thus are deemed to have accepted the Plan.

41. Class 3 voted to accept the Plan pursuant to section 1126(c) of the Bankruptcy Code. With respect to Class 3, 100% of the Class 3 members voting and 100% of the Class 3 dollar amount voting voted to accept the Plan. This satisfies the requirement of Section 1126(c) that more than one-half ( $1/2$ ) of the number and at least two-thirds ( $2/3$ ) of the dollar amount actually voting vote to accept the Plan.

42. Class 4 voted to accept the Plan pursuant to section 1126(c) of the Bankruptcy Code. With respect to Class 4, 100% of the Class 4 members voting and 100% of the Class 4 dollar amount voting voted to accept the Plan. This satisfies the requirement of Section 1126(c) that more than one-half ( $1/2$ ) of the number and at least two-thirds ( $2/3$ ) of the dollar amount actually voting vote to accept the Plan.

43. Class 5 voted to accept the Plan pursuant to section 1126(c) of the Bankruptcy Code. With respect to Class 5, 97.45% of the Class 5 members voting and 99.99% of the Class 5 dollar amount voting voted to accept the Plan. This satisfies the requirement of Section 1126(c) that more than one-half ( $1/2$ ) of the number and at least two-thirds ( $2/3$ ) of the dollar amount actually voting vote to accept the Plan.

44. Class 6 voted to accept the Plan pursuant to section 1126(c) of the Bankruptcy Code. With respect to Class 6, 100% of the Class 6 members voting and 100% of the Class 6 dollar amount voting voted to accept the Plan. This satisfies the requirement of Section 1126(c) that more than one-half ( $1/2$ ) of the number and at least two-thirds ( $2/3$ ) of the dollar amount actually voting vote to accept the Plan.

45. Therefore, section 1129(a)(8) of the Bankruptcy Code is satisfied with respect to the Plan.

**I. Section 1129(a)(9) - Treatment of Certain Priority Claims**

46. There are no claims against the Estate of a kind specified in section 507(a)(1), 507(a)(3), 507(a)(6), or 507(a)(7) of the Bankruptcy Code.

47. The Plan provides for the payment of Allowed Administrative Claims (except for Professional Fees, which shall be treated as set forth in Article 2.5 of the Plan) in full, on or about the latest of: (a) the Effective Date, (b) such other date set by the Court, (c) the tenth Business Day after the Claim is Allowed, (d) such other date as may be agreed by the holder of the Claim and the Liquidation Trustee; and (e) the date on which the Claim is otherwise due according to its terms.

48. The Plan provides for the payment of Allowed Priority Tax Claims (i) in full, without interest, on or about the latest of: (a) the Effective Date, (b) such other date set by the Court, (c) the tenth Business Day after the Claim is Allowed, (d) such other date as may be agreed by the holder of the Claim and the Liquidation Trustee; or (ii) through deferred payments to the extent permitted by section 1129(a)(9) of the Bankruptcy Code with interest on the unpaid portion of such Claim at the statutory rate under applicable non-bankruptcy law or at a rate to be agreed upon by the Liquidation Trustee and the appropriate government unit, or as determined by the Court (provided that the Liquidation Trustee may prepay any or all such Claims at any time, without premium or penalty).

49. The Plan provides for the payment of Allowed Priority Non-Tax Claims in full, on or about the latest of: (a) the Effective Date, (b) such other date set by the Court, (c) the tenth



Business Day after the Claim is Allowed, and (d) such other date as may be agreed by the holder of the Claim and the Liquidation Trustee.

50. Therefore, section 1129(a)(9) of the Bankruptcy Code is satisfied with respect to the Plan.

**J. Section 1129(a)(10) - Acceptance by at Least One Impaired Class**

51. As indicated in the Voting Declaration, Class 3, Class 4, Class 5 and Class 6, impaired classes of claims under the Plan, have accepted the Plan, determined without including acceptance of the Plan by any insider. Therefore, section 1129(a)(10) of the Bankruptcy Code is satisfied with respect to the Plan.

**K. Section 1129(a)(11) - Feasibility of the Plan**

52. The Plan is feasible. Confirmation of the Plan is not likely to be followed by liquidation or further reorganization of the Debtors except to the extent that such liquidation or reorganization is provided for under the Plan. Therefore, section 1129(a)(11) of the Bankruptcy Code is satisfied with respect to the Plan.

**L. Section 1129(a)(12) - Payment of Bankruptcy Fees**

53. Pursuant to Article 6.4(h) of the Plan, beginning with the quarter immediately following the quarter within which the Effective Date occurs, the Liquidation Trustee shall be responsible for paying all Statutory Fees from the Liquidation Trust.

**M. Section 1129(a)(13) - Retiree Benefits**

54. The Debtors are not required to provide retiree benefits as that term is defined in section 1114 of the Bankruptcy Code. Therefore, section 1129(a)(13) of the Bankruptcy Code is satisfied with respect to the Plan.

**N. Section 1129(a)(14) — Domestic Support Obligations**

55. The Debtors are not required to pay any domestic support obligations. Therefore, section 1129(a)(14) of the Bankruptcy Code is inapplicable with respect to the Plan.

**O. Section 1129(a)(15) — Individual Cases Subject to Objection by Unsecured Creditor**

56. The Debtors are not individuals. Therefore, section 1129(a)(15) of the Bankruptcy Code is inapplicable with respect to the Plan.

**P. Section 1129(a)(16) — Transfers of Property Pursuant to Non-Bankruptcy Law**

57. All transfers of property under the Plan shall be made in accordance with any applicable provisions of non-bankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust. Therefore, section 1129(a)(16) of the Bankruptcy Code is satisfied with respect to the Plan.

**Q. Section 1129(d) - Principal Purpose of Plan**

58. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of Section 5 of the Securities Act of 1933, as amended.

**VIII. Good Faith Solicitation; Securities Laws Issues; Rights Offering (11 U.S.C. 1125(e))**

59. Based on the record before the Court in these Chapter 11 Cases, the Debtors, the Committee and its members, and each of their respective attorneys, accountants, agents, and other professionals (including the Professionals), have, to the extent applicable, acted in "good faith" within the meaning of section 1125(e) of the Bankruptcy Code in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all their respective activities relating to the Plan, the solicitation of acceptances of the Plan, and their participation in the activities described in section 1125 of the Bankruptcy Code, and are entitled

to the protections afforded by section 1125(e) of the Bankruptcy Code and the exculpation set forth in Article 11.4 of the Plan

#### **IX. Releases, Injunctions and Exculpations**

60. All releases, injunctions, and exculpations are an integral part of the Plan. Pursuant to section 1123(b) of the Bankruptcy Code and Fed. R. Bankr. P. 9019(a), the releases and injunctions set forth in the Plan, including, without limitation, the releases, injunctions, and exculpations set forth in Article 11 of the Plan, are fair, equitable, reasonable, and necessary under the circumstances.

61. In particular, each of the release, injunction, and exculpation provisions contained in Article 11 of the Plan: (i) falls within the jurisdiction of this Court under 28 U.S.C. §§ 1334(a), (b), and (d); (ii) is an essential means of implementing the Plan pursuant to section 1123(a)(5) of the Bankruptcy Code; (iii) is important to the overall objectives of the Plan to finally resolve, except to the extent otherwise provided in the Plan, all claims among or against the parties in interest in these Chapter 11 Cases; and (iv) is consistent with sections 105, 1123, 1129, and other applicable provisions of the Bankruptcy Code.

#### **X. Agreements, Plan and Other Documents**

62. The Debtors have disclosed all material facts relating to any contract, instrument, release, and other agreement or document to be entered into, executed and delivered, assigned, adopted, or amended in connection with the Plan, including the Liquidation Trust Agreement (collectively, the "Plan Agreements and Documents"). Pursuant to section 1142(b) of the Bankruptcy Code, no approval of the trustees, directors, officers, or shareholders of the Debtors, as applicable, will be required to authorize the Debtors to enter into, execute and deliver, assign, adopt, or amend, as the case may be, the Plan Agreements and Documents, and, following the

Effective Date, each of the Plan Agreements and Documents will be a legal, valid, and binding obligation of the Debtors (or their successors or assignees, if applicable) and the Liquidation Trust, enforceable in accordance with the respective terms thereof (subject only to bankruptcy, insolvency, and other similar laws affecting creditors' rights generally, and subject also to general equitable principles).

**XI. Retention of Jurisdiction**

63. The Court may properly retain jurisdiction to the extent set forth in Article 11.15 of the Plan.

**BASED UPON THE FOREGOING AND THE RECORD BEFORE THIS COURT,  
IT IS HEREBY ORDERED, AND NOTICE IS GIVEN, THAT:**

**XII. Confirmation of the Plan**

64. The record of the Confirmation Hearing shall be and hereby is adopted by the Court and shall be and is hereby closed.

65. The Plan (including any exhibits thereto), is hereby approved and confirmed in each and every respect pursuant to section 1129 of the Bankruptcy Code; provided, however, that if there is any direct conflict between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order will control to the extent of such conflict. The provisions of this Confirmation Order are integrated with each other and are non-severable and mutually dependent unless expressly stated otherwise by further order of this Court.

66. The Debtors, the Committee, the Liquidation Trustee, the Surviving Officer, the Advisory Committee and any other appropriate parties are hereby authorized and directed to take all actions necessary or appropriate to enter into, implement, and consummate the Plan Agreements and Documents, all of which Plan Agreements and Documents are hereby approved,

and to take such other steps and perform such other acts as may be necessary to implement and effectuate the Plan, and are further authorized and directed to execute and deliver any instrument and perform any other act that is necessary for the consummation of the Plan, including the implementation of the Plan Agreements and Documents, in accordance with section 1142(b) of the Bankruptcy Code without the approval of any trustee, director, officer, or shareholders of the Debtor, as applicable.

67. The appointment of Louis E. Robichaux, IV as the Liquidation Trustee under the terms of the Liquidation Trust Agreement, and subject to the terms of the Plan, is hereby authorized and approved. Louis E. Robichaux, IV and any professionals he retains on behalf of the Liquidation Trust, which may include Professionals retained in the Chapter 11 Cases, are authorized to be compensated pursuant to the terms of the Plan and the Liquidation Trust Agreement.

68. The appointment of Louis E. Robichaux, IV as the Surviving Officer under the Plan is hereby authorized and approved.

69. Except as otherwise provided in the Plan or this Confirmation Order, the Liquidation Trustee shall be authorized and is directed to pay, or otherwise make distributions on account of, all Allowed Claims against the Debtors in accordance with the terms of the Plan and the Liquidation Trust Agreement without further Order of this Court.

70. This Confirmation Order shall be effective upon the date of its entry, and the requirement that this Confirmation Order be stayed for a period of fourteen (14) days under Bankruptcy Rule 3020(e) is hereby waived.

### **XIII. Effects of Confirmation**

**A. Plan Binding**

71. Upon the Effective Date, and subject to the provisions of the Plan and this Confirmation Order, the terms of the Plan shall be binding upon the Debtors, the Surviving Officer, the Liquidation Trust, the Liquidation Trustee, the Advisory Committee, the Purchaser, any and all Holders of claims (irrespective of whether such claims are impaired under the Plan or whether the Holders of such claims accepted or are deemed to have accepted the Plan), the non-Debtors parties to executory contracts, unexpired leases, all parties in interest, and the heirs, executors, administrators, successors, and assigns, if any, of any of the foregoing.

**B. Continued Corporate Existence; Vesting of Assets**

72. On and after the Effective Date, the Surviving Officer shall have all right and authority necessary to wind up each of the Debtors, and all remaining officers, directors, and trustees of the Debtors shall be deemed to have resigned. Except as otherwise specifically provided in the Plan, all Restricted Property of a Debtor shall remain with that Debtor pursuant to section 1125(a)(5) of the Bankruptcy Code, and shall be free and clear of all Claims, Liens, classes, encumbrances, and interests. The Debtors shall continue in existence for the purpose of (i) administering their rights and obligations under the Plan; (ii) filing all final cost reports reflecting its operations prior to closing of the Sale Transaction; (iii) filing appropriate tax returns; (iv) dissolving any dormant non-debtor affiliates; and (v) as otherwise necessary to windup their affairs. In addition, the Surviving Officer on behalf of Randolph may take all acts necessary to consent to changes to the Bylaws of the Randolph Hospital Community Health Foundation on account of the Sale Transaction and the eventual dissolution of Randolph. Further, the Surviving Officer, on behalf of the Debtors, shall distribute the Restricted Assets in accordance with applicable non-bankruptcy law. At such time as the Debtors have completed the

actions set forth in this Article, and at each of their respective sole discretion the Debtors will be dissolved in accordance with applicable state law.

73. On the Effective Date, consistent with Article 6.3 of the Plan, the Debtors' Estates shall transfer and shall be deemed to have irrevocably transferred to the Liquidation Trust, for and on behalf of the beneficiaries of the Liquidation Trust, with no reversionary interest in the Debtors, the Trust Assets, free and clear of all Liens, Claims, encumbrances or interests of any kind in such property, except as otherwise expressly provided in the Plan. The transfers of Trust Assets to the Liquidation Trust are legal, valid, and consistent with the laws of the State of North Carolina. The Trust Assets will be held in trust for the benefit of all holders of Allowed Claims pursuant to the terms of the Plan and the Liquidation Trust Agreement. As part of the transfer described in this paragraph, on the Effective Date the Debtors shall transfer to the Liquidation Trust all rights and remedies of the Debtors that are included in the Retained Causes of Action (other than the D&O Claims, Tort Claims, and related rights and remedies, including with respect to any applicable Insurance Policies, which shall revest in the Debtors and may be pursued by the Advisory Committee consistent with the terms of the Plan). The Debtors shall share with the Liquidation Trustee all evidentiary privileges (including the attorney-client privilege, work product, and other applicable privileges) as they relate to Retained Causes of Action transferred to the Liquidation Trust, and such privileges shall vest in the Liquidation Trustee as of the Effective Date. The Debtors shall share with the Advisory Committee all evidentiary privileges (including the attorney-client privilege, work product privilege, and other applicable privileges) as they relate to the D&O Claims and other Tort Claims, and such privileges shall vest in the Advisory Committee as of the Effective Date. All attorney-client privileged information and attorney work product relating to the Retained Causes of Action that

the Debtors share with the Liquidation Trustee or the Liquidation Trustee's professionals will remain confidential and privileged pursuant to a common-interest privilege.

74. As set forth in the Plan, the Advisory Committee shall be deemed a representative of the Debtors and the Estates with respect to the D&O Claims and other Tort Claims under section 1123(b)(3) of the Bankruptcy Code (which shall revert in the Debtors on the Effective Date along with all related rights and remedies, including with respect to any applicable Insurance Policies), and shall be vested with all rights, powers, and authority of a debtor in possession and trustee under the Bankruptcy Code with respect to the D&O Claims and other Tort Claims as of the Effective Date. Upon the occurrence of the Effective Date, the Advisory Committee shall have the right, standing, and authority to investigate, institute, prosecute to final judgment, settle, or otherwise resolve the D&O Claims and other Tort Claims in the Advisory Committee's sole authority. Upon the entry of a final judgment with respect to, or settlement of, any D&O Claim or other Tort Claim by the Advisory Committee, the proceeds of such D&O Claim or other Tort Claim shall be transferred to the Liquidation Trust for use and distribution consistent with the terms of the Plan and the Liquidation Trust Agreement.

75. Consistent with the Plan and this Confirmation Order, on and after the Effective Date, the Liquidation Trustee, Advisory Committee or the Surviving Officer, as the case may be, may take any and all actions authorized by the Plan, Liquidation Trust Agreement, and this Confirmation Order, including, without limitation, to acquire and dispose of property and compromise or settle any claims or Causes of Action without supervision or approval by the Court, and free of any restrictions imposed by the Bankruptcy Code or the Bankruptcy Rules, except as otherwise set forth in the Plan, without further Order of this Court.

76. The Liquidation Trustee, Advisory Committee or Surviving Officer, as



applicable, may pay the charges that are incurred on or after the Effective Date for reasonable professionals' fees, disbursements, expenses, or related support services as set forth in, pursuant to, and in furtherance of, the Plan and the procedures set forth in the Plan and in the Liquidation Trust Agreement.

77. The sale of any real property of the Estates shall be deemed to have occurred pursuant to and in furtherance of the Plan and, thus, shall be exempt from any transfer or similar tax under section 1146 of the Bankruptcy Code.

### **C. Release of Liens and Collateral**

78. Except as otherwise provided in the Plan or in any of the Plan Agreements and Documents, on the Effective Date, all mortgages, deeds of trust, liens, or other security interests against any of the Trust Assets transferred to the Liquidation Trust or revested in the Debtors will be fully released, satisfied, and discharged, and all right, title, and interest of any holder of any such mortgages, deeds of trust, liens, or other security interests will revert to the Liquidation Trust or the Debtors, as applicable. Except as provided in the Plan or this Confirmation Order, unless a particular Secured Claim is reinstated: (i) each holder of a Secured Claim or a claim that is purportedly a Secured Claim shall (a) turn over and release to the Liquidation Trust, Advisory Committee or Surviving Officer, as applicable, any and all property of the Debtors that secures or purportedly secures its claim and (b) execute such documents and instruments as the Liquidation Trustee, Advisory Committee or Surviving Officer, as applicable, may reasonably require to evidence the holder's release of such property; and (ii) on the Effective Date, all claims, right, title, and interest in such property shall be transferred to or vest in the Liquidation Trust or revest in the Debtors, as applicable, free and clear of all claims, including, liens, charges, pledges, interests, encumbrances, security

interests, and any other interests of any kind. The transfer of assets and the revesting of assets provided for herein shall constitute legal and valid transfers in accordance with all applicable laws and regulations.

**D. Causes of Action**

79. Except as explicitly stated in the Plan or in this Confirmation Order, nothing contained in the Plan or this Confirmation Order shall be deemed to be a waiver or relinquishment of any right, claim, Cause of Action (including the D&O Claims and Tort Claims), right of setoff, or any other legal or equitable defense that the Debtors may have as of the Effective Date and that the Surviving Officer, Advisory Committee or Liquidation Trustee, as the case may be, may elect to assert on behalf of the Estates, all of which are expressly reserved and preserved hereby.

80. From and after the Effective Date and notwithstanding any state law to the contrary, the Advisory Committee (as to the D&O Claims and Tort Claims ) and the Liquidation Trustee (as to all Retained Causes of Action) shall have, retain, reserve, be granted standing and entitled to assert, all such Causes of Action, as well as legal or equitable defenses related thereto, which the Debtors had as of the Effective Date.

81. The failure of the Debtors to notify or otherwise list the potential target of any Cause of Action, including any of the D&O Claims or Tort Claims, shall not be deemed to be a waiver or release of such Cause of Action (and all of such Causes of Action shall be expressly preserved), nor shall this Confirmation Order cause such Cause of Action to be deemed barred by operation of *res judicata* or any other legal or equitable doctrine.

82. The Advisory Committee shall retain the right and shall have standing as a result of the Plan and this Confirmation Order to bring the D&O Claims and Tort Claims.

#### **XIV. Claim Bar Dates**

##### **A. General Bar Date Provisions**

83. Unless otherwise previously ordered by the Court, any Claim arising prior to the Petition Date subject to the July 7, 2020 Bar Date not filed by the July 7, 2020 Bar Date is and shall continue to be, in accordance with such Bar Date, forever barred, released, satisfied, discharged, disallowed, and expunged by operation of this Confirmation Order, and shall not be enforceable against the Debtors, the Estates, the Liquidation Trust, the Liquidation Trustee, or their respective successors or respective properties. Any such Claim, whether filed before or after the entry of this Confirmation Order shall automatically be deemed forever barred, released, satisfied, discharged, disallowed, and expunged without the need for further application to or order of the Court. Nothing in the Confirmation Order shall be deemed to extend or modify the Bar Date for filing any Claim for pre-petition amounts against the Debtors or the Estates.

##### **B. Bar Date for Administrative Expense Claims**

84. All requests for payment of Administrative Claims (except with respect to Professional Fees, which shall instead be subject to the Professional Fees Bar Date) must be filed by the Administrative Claim Bar Date (*i.e.*, the date that is thirty (30) days after the Effective Date). Unless otherwise previously ordered by the Court or set forth in the Plan or this Confirmation Order, any Administrative Claim not filed by the Administrative Claim Bar Date is and shall continue to be, in accordance with such Administrative Claim Bar Date, forever barred, released, satisfied, discharged, disallowed, and expunged by operation of this Confirmation Order, and shall not be enforceable against the Debtors, the Estates, the Liquidation Trust, the Liquidation Trustee, or their respective successors or respective properties. Any such Claim filed after the Administrative Claim Bar Date shall automatically be deemed forever barred,

released, satisfied, discharged, disallowed, and expunged without the need for further application to or order of the Court. Nothing in the Confirmation Order shall be deemed to extend the Administrative Bar Date.

**C. Bar Dates for Professional Compensation and Reimbursement Claims**

85. All Professionals seeking payment on account of a Claim for Professional Fees shall file their respective final application for allowance of compensation for services rendered and reimbursement of expenses incurred through the Effective Date on or before the Professional Fees Bar Date (*i.e.*, the date that is sixty (60) days after the Effective Date). If granted by the Bankruptcy Court, awards for Professional Fees shall be paid in full in Cash by the Liquidation Trustee, in such unpaid amounts as are allowed by the Bankruptcy Court, as soon as practicable following the first day after the order allowing such Professional Fees has been entered by the Bankruptcy Court and is not stayed. Failure to file a final application for allowance of compensation for services rendered and reimbursement of expenses incurred through the Effective Date consistent with this paragraph shall result in the applicable Claim for Professional Fees being deemed forever barred, released, satisfied, discharged, disallowed, and expunged.

86. Notwithstanding anything in the Plan to the contrary, nothing shall preclude any party-in-interest (which shall be deemed to include the Liquidation Trustee and the Advisory Committee) from objecting to a final application for allowance of compensation for services rendered and reimbursement of expenses incurred through the Effective Date by any Professional.

87. The Debtors' Professionals shall be required to hold and apply any retainers currently on hand (if any) to their respective Claim for Professional Fees, to the extent such Claim for Professional Fees becomes Allowed and/or payable in accordance with any Final Order awarding and allowing such Professional Fees. Application of such retainer shall be

required prior to the payment of any portion of such Claim for Professional Fees by the Liquidation Trustee. To the extent there remain any funds on retainer after application to such Claims for Professional Fees, such retainers shall be promptly turned over to the Liquidation Trustee.

#### **D. Bar Date for Rejection Damage Claims**

88. If the rejection by the Debtors of an executory contract or unexpired lease pursuant to the Plan gives rise to a Claim by the counterparty or counterparties to such contract or lease, such Claim shall be forever barred, released, satisfied, discharged, disallowed, and expunged by operation of this Confirmation Order, and shall not be enforceable against the Debtors, the Estates, the Liquidation Trust, the Liquidation Trustee, or their respective successors or respective properties, unless a proof of such Claim is filed with the Bankruptcy Court and served on the Liquidation Trustee and its counsel within forty five (45) days after the Effective Date (the “Rejection Damages Bar Date”). Any such Claim filed after the Rejection Damages Bar Date shall automatically be deemed forever barred, released, satisfied, discharged, disallowed, and expunged without the need for further application to or order of the Court. Notwithstanding the foregoing, the Rejection Damages Bar Date does not apply to and does not extend any previous bar dates for rejection damages Claim to the extent such Claim was required to be filed prior to the entry of this Confirmation Order.

#### **XV. Exemptions from Securities Laws**

89. Neither the Debtors nor any other Person that participated in the solicitation of acceptance or rejection of the Plan shall be liable, on account of such action or such participation, for any violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan.

**XVI. Funding of Bank Accounts**

90. As of the Effective Date, and pursuant to the Plan, the Liquidation Trustee is hereby authorized and directed to establish and fund, to the extent funds are available, the accounts contemplated under the Liquidation Trust Agreement and the Plan.

**XVII. Additional Actions in Furtherance of Plan**

91. The approvals and authorizations specifically set forth in this Confirmation Order are nonexclusive and are not intended to limit the authority of the Debtors, the Surviving Officer, the Advisory Committee, the Liquidation Trust, or the Liquidation Trustee to take any actions necessary or appropriate to implement, effectuate, and consummate the Plan, this Confirmation Order, and the transactions contemplated thereby. Without limiting the generality or effect of any other provision of this Confirmation Order, the Debtors, Surviving Officer, Advisory Committee, Liquidation Trust and Liquidation Trustee are hereby specifically authorized and empowered to take any and all such actions as may be necessary or appropriate to implement, effectuate, and consummate the Plan, the Plan Agreements and Documents, this Confirmation Order, and the transactions respectively contemplated thereby and hereby, all in accordance with the terms of the Plan and this Confirmation Order, all without further application to, or order of, this Court, and whether or not such actions are specifically referred to in the Plan, the Disclosure Statement, the Liquidation Trust Agreement, the Solicitation Procedures Order, this Confirmation Order, or the exhibits to any of the foregoing.

**XVIII. Releases, Exculpations and Injunctions**

92. The releases, exculpations, limitations of liability, and injunctions set forth in and subject to the limitations contained in the Plan, including, without limitation, releases, exculpations, limitations of liability, and injunctions set forth in Article 11 of the Plan, are

hereby approved as fair, equitable, reasonable, and in the best interests of the Debtors, their Estates, and their creditors.

93. Pursuant to Section 1123(b) of the Bankruptcy Code and except as otherwise specifically provided in the Plan, for good and valuable consideration, including the service of the Released Parties to facilitate the expeditious reorganization of the Debtors and the implementation of the restructuring contemplated by the Plan, on and after the Effective Date, the Released Parties are deemed released and discharged by the Debtors, the Liquidation Trust, the Liquidation Trustee, and the Estates from any and all Claims, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any derivative claims asserted or assertable on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that the Debtors, the Estates or their affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other Person or other entity that constitutes property of the Debtors' Estates, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' Chapter 11 Cases, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests before or during the Debtors' Chapter 11 Cases, or the negotiation, formulation or preparation of the Sale Transaction, the Plan, the Disclosure Statement, any Plan Supplement or related agreements, instruments or other documents, other than Claims, Causes of Action, or liabilities arising out of or relating to any act or omission of that party constituting willful misconduct or gross negligence.

94. As of the Effective Date and except as otherwise set forth in the Plan, each holder of a Claim or Interest who has voted to accept the Plan and failed to mark its ballots as opting out of the release set forth in Article 11.4 of the Plan shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever, released and discharged the Released Parties from any and all Claims, Interests, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any derivative Claims assertable on behalf of a Debtor, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such Person would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' restructuring, the Debtors' Chapter 11 Cases, the subject matter of, or the transactions or events giving rise to, any Claim that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests before or during the Chapter 11 Cases, or the negotiation, formulation or preparation of the Sale Transaction, the Plan, the Disclosure Statement, any Plan Supplement or related agreements, instruments or other documents, other than Claims, Causes of Action, or liabilities arising out of or relating to any act or omission of that party constituting willful misconduct or gross negligence. No provision of the Plan, including without limitation, any release or exculpation provision, shall modify, release, or otherwise limit the liability of any Person other than the applicable Released Parties, Exculpated Parties, or Persons whose liability is expressly limited, including without limitation, any Person that is a co-obligor, guarantor or joint tortfeasor of a Released Party or Exculpated Party or that otherwise is liable under theories of vicarious or other derivative liability.



95. None of the Liquidation Trustee, the Surviving Officer, or the Advisory Committee or its members will be liable for any act they may do or omit to do in such capacities under the Plan and the Liquidation Trust Agreement, as applicable, while acting in good faith and in the exercise of their reasonable business judgment; nor will such parties be liable in such capacities any event except for gross negligence or willful misconduct. The foregoing limitation on liability also will apply to any professional employed by the Liquidation Trustee, the Surviving Officer, or the Advisory Committee and acting on their behalf under the Plan or the Liquidation Trust Agreement. The Liquidation Trustee and the Advisory Committee (and its members), and any professional employed by the Liquidation Trustee or the Advisory Committee and acting on their behalf under the Plan or the Liquidation Trust Agreement, shall be entitled to indemnification out of the assets of the Liquidation Trust against any losses, liabilities, expenses (including attorneys' fees and disbursements), damages, taxes, suits, or claims that they may incur or sustain by reason of being or having been employed by the Liquidation Trustee or Advisory Committee, or for performing any functions incidental to such service, except for any act or omission that is determined in a Final Order to have constituted gross negligence or willful misconduct

96. Except as otherwise set forth in the Plan, the Exculpated Parties shall not have nor shall they incur any liability to any Person for any act taken or omission made in connection with or in any way related to negotiating, formulating, implementing, confirming, consummating or administering the Plan, the Disclosure Statement, or any contract, instrument, release, or other agreement or document created in connection with or related to the Plan or the Chapter 11 Cases, including, without limitation, relating to the powers and duties conferred upon the Exculpated Parties by the Plan, or any order of the Bankruptcy Court entered pursuant to or in furtherance of

the Plan, or any other act taken or omission made in connection with the Chapter 11 Cases; provided that the foregoing provisions of this Section 11.5 shall have no effect on the liability of any Exculpated Parties that results from any act or omission that is determined in a Final Order to have constituted gross negligence or willful misconduct.

97. To the extent of the exculpation and limitation of liability as provided in paragraphs 89 and 90 above, the Liquidation Trust is deemed to release each Person and Entity who is exculpated, or whose liability is limited, under those paragraphs from any liability arising from any act or omission occurring after the Petition Date and in connection with, relating to or arising out of the Chapter 11 Cases, except as provided in the Plan.

98. Except as otherwise provided in the Plan or this Confirmation Order, as of the Effective Date, to the extent of the releases, exculpations, and limitations of liability set forth in Article 11 of the Plan, all Persons are permanently enjoined from taking any of the following actions against the Released Parties or any of their respective successors or assigns, or any of their respective assets or properties, on account of any claim or Cause of Action: (1) commencing or continuing in any manner any action or other proceeding with respect to any claim or Cause of Action; (2) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order with respect to any claim or Cause of Action; (3) creating, perfecting or enforcing any lien or encumbrance with respect to any claim or Cause of Action; or (4) commencing or continuing any action that does not comply with or is inconsistent with the Plan; provided, however, nothing in this injunction shall preclude the holder of a Claim from pursuing any available insurance or from seeking discovery in actions against third parties.

99. On and after the Effective Date, no Person who has held, holds or may hold Claims against the Debtors or the Estates, or Interests in the Debtors, may, with respect to any such

Claims or Interests, pursue rights and/or take actions against the Liquidation Trust, the Liquidation Trustee, Surviving Officer, the Debtors, the Estates, or their property on account of such Claims or Interests other than as expressly provided in the Plan. Specifically, Persons holding Claims against the Debtors or their Estates are permanently enjoined from and after the Effective Date from: (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtors, the Estates, the Surviving Officer, the Liquidation Trust, the Liquidation Trustee, or any of their property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing Persons, including, without limitation, the Purchaser, or any property of any such transferee or successor; (b) enforcing, levying, attaching (including, without limitation, any pre-judgment attachment), collecting or otherwise recovering by any manner or means whether directly or indirectly, of any judgment, award, decree or order against the Debtors, their Estates, the Liquidation Trust, the Liquidation Trustee, any of their property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing with respect to such person's Claim or Interest; (c) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtors, the Estates, the Liquidation Trust, the Liquidation Trustee, any of their property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing; (d) asserting any right of setoff or recoupment, of any kind, directly or indirectly, against any obligation due the Debtors or the Estates, any of their property, or any direct or indirect transferee of any property of, or successor in interest to, any of the foregoing Persons, including without limitation the Liquidation Trust and the Liquidation Trustee; and

(e) taking any actions in any place and in any manner whatsoever that do not conform to or comply with the provisions of the Plan. Notwithstanding the foregoing, nothing in this paragraph shall prohibit any Person from enforcing the terms of the Plan or the Confirmation Order in the Bankruptcy Court.

**XIX. Substantial Consummation**

100. The substantial consummation of the Plan, within the meaning of section 1127 of the Bankruptcy Code, shall be deemed to have occurred on the Effective Date. The Liquidation Trustee shall file an application for a final decree at the appropriate time as provided in Article 6.4(a) of the Plan.

**XX. Retention of Jurisdiction**

101. Notwithstanding the entry of this Confirmation Order and the occurrence of the Effective Date, the Court shall retain exclusive jurisdiction over the Chapter 11 Cases until the Chapter 11 Cases are closed, including jurisdiction to issue any other Order necessary to administer the Estates or the Liquidation Trust Estates and enforce the terms of the Plan, and/or the Liquidation Trust Agreement pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

a. To determine any motion, adversary proceeding, avoidance action, application, contested matter, or other litigated matter involving the Debtors pending before the Bankruptcy Court as of the Effective Date or that may be instituted by or against the Liquidation Trustee or the Advisory Committee after the Effective Date;

b. To hear and determine (i) applications for the assumption or rejection of executory contracts or unexpired leases and the allowance of Claims resulting therefrom; (ii) any matters related to any potential contractual obligation under any executory contract or unexpired

lease that is assumed; and (iii) any dispute regarding whether a contract or lease is or was executory or expired;

c. To ensure that distributions to holders of Allowed Claims are accomplished as provided in the Plan;

d. To hear and determine objections to the allowance of Claims, whether filed, asserted or made before or after the Effective Date, including, without limitation, to hear and determine objections to the classification of Claims and the allowance or disallowance of Disputed Claims, in whole or in part;

e. To consider Claims or the allowance, classification, priority, compromise, estimation, secured or unsecured status, or payment of any Claim;

f. To adjudicate, decide, or resolve any and all matters relating to Causes of Action (including the D&O Claims and other Tort Claims) by or on behalf of the Debtors, the Liquidation Trust, the Liquidation Trustee, or the Advisory Committee; provided, however, that nothing in the Plan or the Confirmation shall vest the Bankruptcy Court with exclusive jurisdiction over Causes of Action (including the D&O Claims or Tort Claims or any dispute relating to coverage of such claims under any Insurance Policies);

g. To enter and enforce any order for the sale of property pursuant to Bankruptcy Code Sections 363, 1123, or 1146(a);

h. To adjudicate, decide, or resolve any disputes in connection with the interpretation, implementation, or enforcement of the Liquidation Trust, Liquidation Trust Agreement, or actions involving the Liquidation Trustee;

i. To enter, implement, or enforce such Orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked, modified, or vacated;

j. To issue injunctions, enter and implement other Orders, and take such other actions as may be necessary or appropriate to restrain interference by any Person with the consummation, implementation, or enforcement of the Plan, the Confirmation Order or any other order of this Court;

k. To hear and determine any application to modify the Plan in accordance with Bankruptcy Code Section 1127, to remedy any defect or omission or reconcile any inconsistency in the Plan, the Disclosure Statement, or any Order of the Bankruptcy Court, including the Confirmation Order, in such a manner as may be necessary to carry out the purposes and effects thereof;

l. To hear and determine all Claims for Professional Fees;

m. To hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, the Confirmation Order, or any transactions or payments contemplated hereby or thereby, or any agreement, instrument, or other document governing or relating to any of the foregoing; provided, however, that any action, controversy, dispute, claim, or question arising out of or relating to the right of any party to enforce, contest, and/or litigate the existence, primacy, and/or scope of available coverage and/or any defenses to coverage under the Insurance Policies shall be referred to and resolved solely in accordance with the terms and conditions of the Insurance Policies and applicable non-bankruptcy law, including, but not limited to, any choice of law, forum, or jurisdiction provision therein;

n. To take any action and issue such Orders as may be necessary to construe, enforce, implement, execute, and consummate the Plan, including any release or injunction

provisions set forth herein or in the Plan, or to maintain the integrity of the Plan following consummation;

o. To determine such other matters and for such other purposes as may be provided in the Confirmation Order;

p. To hear and determine matters concerning state, local, and federal taxes in accordance with Bankruptcy Code Sections 346, 505, and 1146;

q. To enforce all orders previously entered by the Bankruptcy Court;

r. To enter a final decree closing the Debtors' Chapter 11 Cases;

s. To recover all assets of the Debtors and property of the Estates, wherever located; and

t. To hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code, title 28 of the United States Code and other applicable law.

## **XXI. Post-Confirmation Notices and Reports**

102. Pursuant to Bankruptcy Rules 2002(7) and 3020(c), the Debtors are directed to file and serve a notice of (i) the entry of this Confirmation Order and (ii) declaration of the Effective Date on all holders of claims and other parties-in-interest no later than the date that is seven (7) days after the declaration of the Effective Date; provided, however, that the Debtors shall be obligated to serve the aforementioned notice only on the record holders of claims at their last known address.

103. After the Effective Date, the Liquidation Trustee shall comply with the record keeping and reporting requirements set forth in Fed. R. Bankr. P. 2015(a)(2) and (5); specifically, the Liquidation Trustee shall keep a record of the Liquidation Trust's receipts and the Liquidation

Trust's disposition of money and property received and, consistent with Article 6.4 of the Plan, file, on a quarterly basis, a report setting forth all Liquidation Trust disbursements, distributions, and transfers that have been made during the reporting period pursuant to the Plan. Such report shall also set forth the amount of Liquidation Trust cash on hand at the beginning of the reporting period and the amount of Liquidation Trust cash on hand at the end of the reporting period. In addition, the Liquidation Trustee will file a final report and accounting pursuant to section 9.1 of the Liquidation Trust Agreement and Article 6.4 of the Plan. No other reporting requirements shall apply to the Liquidation Trustee, Surviving Officer or Advisory Committee. For the avoidance of doubt, the reporting requirements set forth in the Court's operating order entered at docket number 31 (the "Operating Order") are hereby modified consistent with this paragraph.

## **XXII. Miscellaneous**

104. As set forth below, Health Value Management, Inc. d/b/a ChoiceCare Network and its parents, subsidiaries, and affiliates ("ChoiceCare") and the Debtors have resolved the treatment of ChoiceCare's rights and claims arising under certain executory contracts (the "ChoiceCare Agreements") under the Plan. Notwithstanding anything in the Plan, Disclosure Statement, Sale Order and APA to the contrary, the Plan and Disclosure Statement are modified such that:

- ChoiceCare's rights under the ChoiceCare Agreements and applicable law with regard to any amounts owed to ChoiceCare by the Debtors, the Estates, any direct or indirect transferee of any property of the Estates, or any successors in interest to the Debtors under the Plan (including, without limitation, the Liquidation Trust, but excluding the Purchaser) (the "Debtor Parties") are hereby preserved;
- Effective as of October 1, 2021 (the "Assignment Date"), the Debtors shall assume the Choicecare Agreements and assign the ChoiceCare Agreements to the Purchaser, pursuant to 11 U.S.C. § 365, subject to the terms and conditions of this paragraph 98; provided, however, that the Assignment Date may be extended by the agreement of the Debtors and the Purchaser to extend the IMA Termination Date;



- The Purchaser and the Debtors shall give ChoiceCare written notice of any extension of the IMA Termination Date beyond October 1, 2021 at least five business days before such extension will occur and in such notice shall provide ChoiceCare with the new Assignment Date.
- ChoiceCare can recoup any overpayment amounts paid to the Debtors pursuant to the terms of the ChoiceCare Agreements from any amount due to the Debtors or the Purchaser for any services billed under ChoiceCare Agreements before or after the Assignment Date and such recoupments by ChoiceCare are not stayed by the automatic stay set forth in 11 U.S. Code § 362 and will not be stayed by any subsequent Plan injunction;
- ChoiceCare shall attempt to recoup any overpayments from available receivables. If there are amounts due and owing by the Debtors after ChoiceCare recoups overpayments from available receivables, ChoiceCare retains its rights to file an Administrative Proof of Claim, if applicable, and retains its rights as asserted in its Proofs of Claim filed to date;
- The Debtors expressly reserve all rights under the ChoiceCare Agreements, including without limitation all rights to dispute, appeal and reconcile all claimed overpayments;
- ChoiceCare expressly reserves all rights under the ChoiceCare Agreements and otherwise against the Purchaser if any of the ChoiceCare Agreements are assigned to the Purchaser.

105. If there is any direct conflict between the terms of the Plan and this Confirmation Order, on the one hand, and the terms of the Operating Order, on the other hand, the terms of the Plan and this Confirmation Order will control to the extent of such conflict.

106. The failure to include or otherwise refer to any specific provision of the Plan in this Confirmation Order shall not be deemed or construed as a waiver or deletion or to otherwise impair or adversely affect any such omitted provisions of the Plan.

**END OF DOCUMENT**